

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of Petition of	)	
Continental Airlines, Inc. for a	)	
Declaratory Ruling Regarding Whether	)	
Certain Restrictions on Antenna	)	ET Docket No. 05-247
Installation Are Permissible under the)		
Commission's Over-The-Air Reception )		
Devices (OTARD) Rules	)	
	)	

**REPLY COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY**

The Alliance for Public Technology (“APT”) appreciates the opportunity to submit this brief reply to comments filed in the above-captioned proceeding concerning a petition for declaratory ruling filed by Continental Airlines (“Continental”)<sup>1</sup>. APT is a nonprofit organization of public interest groups and individuals, working together to foster broad access to affordable, usable information and communications services and technology, for the purpose of bringing better and more affordable health care to all citizens, expanding educational opportunities for lifelong learning, enabling people with disabilities to be independent and productive members of our society, creating opportunities for jobs and economic advancement, making government more responsive to all citizens and simplifying access to communications technology.

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<sup>1</sup> Petition of Continental Airlines, Inc. for Declaratory Ruling, filed July 7, 2005.

Continental<sup>2</sup> and T-Mobile<sup>3</sup> have clearly demonstrated that the Massachusetts Port Authority (“Massport”)’s restrictions will impair Continental’s ability to install, maintain and use a fixed wireless antenna, in violation of the Commission’s OTARD rules and its policies. In turn, Massport<sup>4</sup> fails to offer convincing arguments why its restrictions fall within the public safety<sup>5</sup> and central antenna<sup>6</sup> exceptions to these rules.

### **Public Safety Exception**

“[P]romoting the safety of life and property” is a core purpose for which the Commission was created,<sup>7</sup> and the operation of a major metropolitan airport unquestionably presents many complex and difficult public safety issues. Nonetheless, at this date the public safety uses to which Massport’s central antenna system may be put appear to be mostly speculative,<sup>8</sup> as is, necessarily, any evidence that Continental’s unlicensed operations are interfering with such public safety communications. These facts, plus other options for alleviating possible interference by unlicensed operations to public safety communications,<sup>9</sup>

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<sup>2</sup> Comments of Continental Airlines, Inc., filed September 28, 2005 (“Continental Comments”).

<sup>3</sup> Comments of T-Mobile USA, Inc., filed September 28, 2005 (“T-Mobile Comments”).

<sup>4</sup> Comments of the Massachusetts Port Authority, filed September 28, 2005 (“Massport Comments”).

<sup>5</sup> 47 C.F.R. § 1.4000(b).

<sup>6</sup> Order on Reconsideration, *Implementation of Section 207 of the Telecommunications Act of 1996*, 13 FCC Rcd 18962, 18998-99 ¶¶ 86, 88 (1998).

<sup>7</sup> 47 U.S.C. § 151.

<sup>8</sup> *See, e.g.*, Massport Comments at 14 (“are considering the use”); 15 (“understands that the State Police plans to deploy”); and 16 (“is also considering using”).

Indeed, if all the potential public safety uses of Massport’s central antenna system come to fruition, this facility may raise a serious public policy issue regarding whether unlicensed, shared spectrum is an appropriate resource for meeting critical public safety communications needs, instead of spectrum specifically allocated for public safety purposes.

<sup>9</sup> Massport’s Comments identify a number of such options. *See, e.g.*, 23-25.

make it impossible to agree with Massport's assertion that a preemptive ban on its tenants' unlicensed wireless operations is no more burdensome than necessary to protect a clearly defined, legitimate safety objective.

### **Central Antenna Exception**

Notwithstanding Massport's assertions, Continental's and T-Mobile's comments demonstrate that requiring Continental to utilize Massport's central antenna system will increase costs,<sup>10</sup> as well as prevent its users from accessing their desired services or providers.<sup>11</sup> Thus, Massport fails to satisfy at least two of the four prongs of the central antenna exception to the OTARD rules.

### **Conclusion.**

Unlicensed wireless operations are likely to interfere with the commercial expectations of Massport and many other organizations. Nonetheless, the innovation, competition and consumer choice such services offer are good for consumers, and consistent with the policies set by Congress and the Commission. APT respectfully urges the Commission to grant Continental's petition.

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Respectfully Submitted:

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<sup>10</sup> Continental Comments at 9-10; T-Mobile Comments at 8.

<sup>11</sup> Continental Comments at 13-14; T-Mobile Comments at .8

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